

NO. [REDACTED] 14

IN THE
Supreme Court of the United States

OCTOBER TERM, 1943

R. J. THOMAS,
Appellant
v.

H. W. COLLINS, SHERIFF OF TRAVIS COUNTY, TEXAS,
Appellee

Appeal from the Supreme Court of Texas

**APPELLEE'S REPLY TO BRIEF FOR
APPELLANT**

GROVER SELLERS
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*To the Honorable The Supreme Court of the
United States:*

REPLY TO QUESTIONS OF FACT

The appellant in his brief makes several statements of fact and some mixed statements of fact and

law, which are not supported by the record. The two points which we mention in particular are: First, that appellant is being prosecuted for the crime of speech making and second, that he was not a paid labor organizer. As to the first point, appellant at page 12 of his brief says:

"There is no issue but that the full and complete extent of the forbidden activities of the Plaintiff was the making of a speech. There is no issue as to the fact that the making of this speech was the only act in which Appellant engaged and for which it is the State's contention that he was required to have a license."

Appellant at Page 38 further says:

"The statute in the present case prohibited Appellant from making his speech without a license at any time or under any circumstances."

The verified motion for contempt alleges appellant's violation of the temporary restraining order as follows:

"That on the 23rd day of September, 1943, at the City Hall in Pelly, Harris County, Texas, the said R. J. Thomas, without procuring an organizer's card as required by law of labor organizers and without making application to the Secretary of State for such a card, did at said time and place solicit Pat O'Sullivan, a resident of Bay Town, Texas, and an employee of the Humble Oil & Refining Company's plant at Bay Town to join a local union of the Oil Workers

International Union, which said union is affiliated with the Congress of Industrial Organizations of which said R. J. Thomas is Vice-President. The said O'Sullivan at said time was not a member of the local union of the Oil Workers International Union and said R. J. Thomas then and there did take his application to become a member, all in violation of this Court's order and the writ of temporary restraining order issued pursuant thereto." R. 297.

The testimony at the contempt hearing showed without dispute that this allegation was true and that appellant's solicitation of Pat O'Sullivan took place after appellant had completed his speech at Pelly, Texas, on September 23, 1943, but before the crowd had actually disbursed. R. 4, 5, 6. The solicitation of Pat O'Sullivan does not appear in the typewritten speech (R. 279-290), but was apparently an impromptu performance on the part of appellant after he had finished his prepared speech. R. 40, 41, 44. The right of appellant to make the speech at Pelly, Texas, which is copied in the record, is not an issue in this case. It was his act of solicitation of Pat O'Sullivan after he had finished with his speech that constituted a violation of the temporary restraining order.

Second, the appellant at page 4 of his brief has said:

"Appellant is paid a salary for his work as President of UAW, and serves as vice-president of the CIO without salary."

Appellant at Page 27 further says:

"He received no fee or salary from the Oil Workers International Union. . . . His solicitation of membership for the Oil Workers Union was an act of fraternal assistance rendered in the interest of trade unionism generally."

These statements may be true but there is no evidence in the record to support them. The Attorney General alleged in his petition for temporary restraining order and in his motion for contempt that appellant was a paid labor organizer. R. 292, 296. The District Court in its judgment for contempt found that "the defendant R. J. Thomas was on the 23rd day of September, A. D. 1943, a labor organizer for a pecuniary consideration." R. 308. The Supreme Court of Texas recites in its opinion that "Relator's counsel in his argument before this court conceded the existence of the necessary factual basis for the judgment in the contempt proceedings." R. 320.

The present appeal constitutes a collateral attack on the contempt judgment. The finding that appellant was a "labor organizer" within the meaning of that term as used in the Texas Statute cannot be reviewed in this hearing. *Ex parte Lipscomb*, 111 Tex. 409, 239 S. W. 1101. Furthermore, the record contains ample evidence to support this fact finding. R. 26-28, 30, 33, 36, 41, 44, 289, 290. There is no evidence to the contrary and nothing in the record to support the statements that appellant "serves as Vice-President of the C. I. O. without salary," and that appellant "received no fee or salary from the Oil Workers International Union."

The appellant at page 6 of his brief also states that "appellant did not sign up any workers as members of the union." There is no evidence in the record to support this statement.

REPLY TO QUESTIONS OF LAW

We feel that the authorities cited in our original brief sufficiently support the judgment of the court below, but we make this short observation in reply to appellant's argument.

Appellant seems to assume as basis for his argument that labor unions as such are comparable to a religious sect or congregation whose primary objective is to engage in "the free exercise of religion." He states time and again in his brief that the final goal of a labor union is "for the better effectation of civil rights" on behalf of its members. This, of course, is not true. This Court knows of its own knowledge that labor unions exist only for the purpose of improving the economic status of its members. They grow as organizations in proportion to their ability to increase the size of their members' pocket books. A labor union does not exist for the purpose of enabling its members to exercise their rights of free speech. Employees generally exercise the freedoms of speech, press and assembly without belonging to a labor union. It is true that in forming and fostering a labor union it is necessary that the organizers speak and write, but the organization when formed is something entirely different from

the exercise of the freedoms of speech, press and assembly by its members. Labor unions, contrary to the advice of many of the friends of labor, have consistently refused to incorporate and function as a legal entity. Texas laws authorize labor unions to incorporate. Article 1302 (83), Vernon's Annotated Civil Statutes. It is our view that without incorporation a labor union as such is not a "person" within the meaning of the Fourteenth Amendment and has no civil rights. *Grosjean v. American Press Co.*, 297 U. S. 233, 244; see, Justice Black's dissent in *Conn. General Ins. Co. v. Johnson*, 303 U. S. 85-90. The labor union, however, as an unincorporated association does engage in business. It is a business which the State may regulate in the public interest. The Legislature in passing such regulations need not look for "grave and immediate danger" to the public welfare but such legislation is valid if there is a "rational basis" for the State's action.

We make the foregoing observations in response to the argument on pages 45 and 51 of appellant's brief. We do not think, however, that the determination of these questions is controlling in this case. The appellant as a paid labor organizer was himself engaged in a business or occupation that is subject to reasonable regulation under the State's police power. But in any event the particular section of the Texas law involved here is nothing more than a registration statute, which is regulatory and not prohibitory. Section 5 of the Statute is a proper exercise of the State's police power even though we assume that neither paid labor organizers nor a labor union is engaged

in business and that a labor union exists for the sole and only purpose of better effectuating the civil rights of free speech on the part of its members.

WHEREFORE, appellee prays that the appeal be dismissed, or in the alternative that the judgment below be affirmed and that costs be adjudged against appellant.

Respectfully submitted,

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A copy of this brief has been mailed to Mr. Ernest Goodman, 3220 Barlum Tower, Detroit, 26, Michigan; Messrs. Lee Pressman and Eugene Cotton, 718 Jackson Place, N. W. Washington, D. C.; and Messrs. Arthur J. Mandell and Herman Wright, Fifth Floor State National Bank Building, Houston, Texas, Attorneys for R. J. Thomas, Appellant.